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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 HILL RHF HOUSING PARTNERS, L.P.;  
13 OLIVE RHF HOUSING PARTNER, L.P.,

14 Petitioners/Plaintiffs,

15 vs.

16 CITY OF LOS ANGELES *et al*,

17 Respondents/Defendants.

CASE NO.: BS170127

**RESPONDENT CITY OF LOS  
ANGELES'S OPPOSITION TO MOTION  
TO COMPEL FURTHER RESPONSES  
TO RHF'S REQUESTS FOR ADMISSION**

Dept.: 86  
Date: May 25, 2018  
Time: 9:30 a.m.

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1           Petitioners argue that although the City of Los Angeles (the "City") admitted or denied  
2 over 85% of their Requests for Admission, the City had no reason to deny 11 other Requests for  
3 lack of sufficient information. Petitioners argue that the City has enough information to either  
4 admit or deny those 11 Requests based solely on the Record, and so must. The City, on the other  
5 hand, believes these Requests are completely improper, and in any event seek extra-record  
6 information it does not yet have.

7           Petitioners are in a dilemma. Either these requests are entirely improper because they do  
8 not seek extra-record information and so are prohibited in a mandamus action, or these requests  
9 seek extra-record information the City does not yet have, in which case the City's answers are  
10 proper. These requests are objectionable regardless for being duplicative and unnecessary, but  
11 Petitioners fail to address this basic conundrum. Either their requests are improper, or the City's  
12 responses are proper.

13           This continues Petitioners' conduct during the meet and confer process. When the City  
14 pointed out that these Requests sought nothing that could further this litigation, duplicated other  
15 requests (often literally), and were completely unjustified in a mandamus case, Petitioners  
16 refused to address these concerns in any but the broadest manner. Thus, Petitioners complained  
17 of the responses to "Request Nos. 57-61, 63, 65, 72, 76, 78, & 82" as a block, with exactly the  
18 same complaint for all: that the City could admit or deny the Requests without reservation.  
19 Petitioners' earlier failure to explain their position for these very different Requests made it  
20 impossible for the parties to have any reasonable chance to resolve this without court  
21 intervention. Indeed, while Petitioners argued that the City **must** answer these Requests for  
22 Admissions solely from the Record, Petitioners at the same time argued that the City **could not**  
23 cite solely to documents in the Record to justify its failure to admit these and similar Requests.  
24 Petitioners thus created a paradox they refused to address.

25           Nevertheless, the City attempted to find ways to provide information that would satisfy  
26 Petitioners, but was ignored. The City offered that it could amend most, if not all, of these  
27 requests if Petitioners would stipulate to going forward solely on the Administrative Record.  
28

1 This seemed to be a reasonable step. But other than asking the City to answer two completely  
2 reworded requests, Petitioners ignored the City's concerns altogether.

3 Petitioners Motion to Compel should be denied solely for this failure to make a good  
4 faith effort to meet and confer; however, the Motion also should be denied because Petitioners  
5 are not entitled to any further response. These Requests seek discovery regarding a mandamus  
6 action. In such matters discovery is allowed only to find the extremely limited evidence  
7 admissible in such matters. But Petitioners admit that this discovery does not seek, let alone  
8 have any reasonable chance to locate, such extrinsic evidence. Petitioners thus do not even  
9 attempt to show that their Requests are reasonably directed towards the shallow pool of  
10 discovery topics allowed here.

11 Going to the substance, the contentious responses refer to requests that either explicitly or  
12 implicitly require extrinsic evidence. Because of this basic problem with their current position,  
13 in their Motion to Compel Petitioners often reworded their Requests completely or ignored what  
14 the Requests actually say. Petitioners could have cleared this up with a single sentence<sup>1</sup> but  
15 never even tried, and now argue that the City could answer solely based on the record despite  
16 their refusal to concede that no extrinsic evidence is admissible here.<sup>2</sup>

17 Likewise, Petitioners now argue that this discovery addresses the contents of documents  
18 (contrary to their position during the meet and confer process). If the Requests do merely  
19 address the contents of documents in the Record, the City's objections are well-founded; such  
20 discovery cannot lead to any discoverable information. On the other hand, if the requests seek  
21 information beyond the record, not only the City's objections but the responses themselves are  
22 well-founded. Either way the Motion should be denied.

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25 <sup>1</sup> The City only served discovery because Petitioners' own requests indicated that they intended  
26 to rely on evidence outside of the Administrative Record. The City otherwise would not have  
27 seen much point to discovery in cases such as this. The City made it clear that the only response  
28 it was seeking was (1) do Petitioners intend to use extrinsic evidence and if so (2) what is it?  
(Declaration of Daniel M. Whitley at ¶ 11.)

<sup>2</sup>As a side issue, the City believes the Court could find that Petitioners, in filing this Motion, have  
taken the position that only the administrative record is at issue and so have waived the right to  
introduce any extrinsic evidence at trial.

1 Finally, all of the requests at issue here are duplicative if they do not address extrinsic  
2 evidence and therefore Petitioners are not entitled to exceed their allotted 35 Requests. Most of  
3 them repeat other Requests verbatim or with minor and inconsequential changes. Petitioners  
4 have no justification to even propound them, let alone seek to compel responses. But to the  
5 extent these Requests do address “new” material, they must go beyond the Record. Thus, the  
6 Court should find that the Requests cannot be answered solely with information from the Record,  
7 as these requests otherwise exceed the allotted 35 for no reason, and deny the Motion.

8 For these reasons the Motion to Compel should be denied and sanctions should be  
9 imposed.

10 **I. FAILURE TO MEET AND CONFER.**

11 Petitioners failed to make a reasonable attempt to meet and confer on these Requests.  
12 Under Code of Civil Proc. § 2016.040, a party must show “a reasonable and good faith attempt at  
13 an informal resolution of each issue presented by the motion.” “A reasonable and good faith  
14 attempt at informal resolution entails something more than bickering with deponent's counsel at a  
15 deposition. Rather, the law requires that counsel attempt to talk the matter over, compare their  
16 views, consult, and deliberate.” (*Townsend v. Superior Court* (1998) 61 Cal. App. 4th 1431,  
17 1437.) As part of these reasonable and good faith attempts, parties must consider alternative  
18 methods to resolve discovery disputes and consider the suggestions made by their opponents.  
19 (*See Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 430-432.)

20 Far from meeting this burden, Petitioners evince exactly the conduct rejected by  
21 *Townsend* and *Obregon*. Petitioners failed to even explain most of their concerns, let alone  
22 attempt to resolve them. Petitioners utterly ignored the City’s attempts to find common ground.  
23 Other than repeatedly telling the City it was wrong, Petitioners made no real effort to resolve  
24 these issues.

25 Thus, Petitioners sent the City a letter vaguely referring to Requests 57-61, 63, 65, 72, 76,  
26 78, and 82, addressing them all as a single “Request,” and specifically addressing only Request  
27 72. (*See Exhibit G to Petitioners’ Motion to Compel*, Page 4-5.) These Requests were all  
28 substantially different from each other (albeit very similar to other Requests the City admitted or

1 denied). Some explicitly referred to documents in the Administrative Record (i.e., Request 72),  
2 while others did not (i.e., Request 60). Some explicitly refer to facts that do not appear in the  
3 Record (i.e., Request 57), while others do not. Thus, although all 11 appear to require extrinsic  
4 evidence, the reasons for requiring this evidence, and the extent it was needed, are different. It  
5 might not have been required at all for some (had Petitioners explained exactly what they  
6 sought), and had Petitioners addressed them separately this could have been ironed out. Despite  
7 these differences, Petitioners treated them all the same, as raising the same issues and the same  
8 concerns.

9 Nor did Petitioners join the City in looking for ways to resolve these disputes. The City  
10 offered to amend its responses if Petitioners would agree to rely only on the Administrative  
11 Record. This seemed very reasonable, given the extremely limited extrinsic evidence Petitioners  
12 could possibly provide and the complete absence of any indication such extrinsic evidence  
13 existed. But Petitioners rejected this out of hand and provided no proposals of their own. Nor  
14 did Petitioners attempt to limit discovery in response to the City's objections to the number and  
15 breadth of Requests at issue. Moreover, with the exception of Requests 57-59, in which  
16 Petitioners simply abandoned their actual Requests and asked the City to address matters already  
17 addressed by other Requests, Petitioners made no attempt to compromise.<sup>3</sup>

18 Furthermore, while quibbling with the City's Responses here Petitioners also objected to  
19 the City's Interrogatory Responses based on these Requests. There, however, Petitioners  
20 objected that the City **cannot** rely on the Report and other documents in the Record to support its  
21 Responses. Instead, Petitioners demanded "facts" beyond merely citing to the documents as  
22 allowed by normal discovery rules. Thus, during the Meet and Confer process Petitioners  
23 explicitly took the position that the City **could not** rely on the very same documents Petitioners  
24 now argue allows the City to respond.

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25  
26 <sup>3</sup> This was clearly a bad-faith offer, as then these requests as reworded are virtually identical to  
27 other Requests made by Petitioners (such as Request 52.) If Petitioners had met and conferred in  
28 good faith, this would have been a perfect opportunity to concede the City's responded to this  
topic already and move on to other areas. Petitioners, however, were more interested in making  
quick "argument" points than addressing these matters in a meaningful way.

1 This is unreasonable. Even if Petitioners were correct on every point (which they were  
2 not), Petitioners had a duty to attempt to resolve this dispute through compromise and  
3 negotiation. At the very least, if Petitioners believed the Record itself required the City to  
4 respond to these Requests without further investigation, Petitioners should have dropped their  
5 demands that the City provide "facts" beyond citing to documents to support its response. But  
6 Petitioners did nothing but repeat its demands, focusing on debate points and legal arguments.  
7 Petitioners burdened the City and now the Court with a pointless discovery dispute. The Court  
8 should not reward this conduct. The Motion to Compel should be denied.

9 **II. THE CITY'S OBJECTIONS ARE WELL-FOUNDED AND NO FURTHER**  
10 **RESPONSES ARE REQUIRED.**

11 Petitioners appear to largely miss the point of the City's objections. The City contends  
12 that Petitioner's Requests for Admission largely (if not solely) address the contents of  
13 documents, are repetitive and duplicative, and address marginal and immaterial aspects of those  
14 documents. In the context of a mandamus action, with evidence and issues largely (probably  
15 completely, here) limited to the Administrative Record, such discovery is rarely allowed and  
16 should be circumspect.

17 Petitioners show little interest in addressing these concerns. Even in this Motion to  
18 Compel, Petitioners rely on generalities, such as that discovery is "broad" and is "allowed" in  
19 Writs. Perhaps so! But Petitioners make no showing that these requests are likely to lead to  
20 discoverable information or are that this matter justifies 82 repetitive requests. Petitioners do not  
21 appear to make any argument at all that these Requests further the course of this litigation. The  
22 City's objections are well-founded and should be sustained.

23 **A. NOTHING JUSTIFIES MORE THAN 35 REQUESTS FOR**  
24 **ADMISSION IN THIS MATTER.**

25 Petitioners fail to provide any reason why the Court should allow more than 35 Requests  
26 for Admission. The Code allows only 35 Requests for Admission unless a party can show that  
27 the complexity or quantity of issues requires additional Requests. (See Code of Civil Procedure  
28 §§ 2033.030 and 2033.050.) In the declaration in support of additional Requests, the requestor

1 must provide "the reasons why the complexity or the quantity of issues in the instant lawsuit  
2 warrant this number of requests for admission." (Code of Civil Procedure § 2033.050.)

3 In support of their Requests, Petitioners declared that they needed more than 35 Requests  
4 "because of the complexity of the law governing business improvement districts and the quantity  
5 of issues in the instant lawsuit against the City of Los Angeles." (Declaration for Additional  
6 Discovery, attached to Form Requests for Admission, Exhibit A to Motion to Compel.) This  
7 says almost nothing. Substitute "this run of the mill contract claim" or "this run of the mill  
8 personal injury action" for "business improvement districts," and it would theoretically justify  
9 any number of responses in virtually any lawsuit. The Declaration thus fails to provide any  
10 reasons why this matter is "complex" or raises a "quantity of issues," let alone any reason why  
11 more than 35 Requests are needed. Nor do Petitioners provide any justification in their Motion.  
12 They ignore this fundamental issue altogether. Therefore, Petitioners fail to satisfy the Code and  
13 are not entitled to responses to more than the first 35 Requests under any circumstances.

14 But worse, the requests at issue here all repeat other requests (or the Verified Complaint)  
15 virtually verbatim. They duplicate not just the substance, but the specific language. The  
16 "complexity" or "quantity" of issues can never justify duplicative requests. Petitioners are not  
17 entitled to propound the Requests they seek, nor to force the City to answer.

18 Moreover, these requests ask the City to admit to direct quotations or paraphrases from  
19 documents. The document either contains that language or it does not, and admissions regarding  
20 such document contents shed little light on the matter. Petitioners fail to even argue that these 82  
21 Requests "clarify" any material issue or "narrow" any material dispute. Even if such requests  
22 have some slight tendency to help clarify the issues or narrow matters for trial, such a purpose  
23 does not show a "complexity" that warrants exceeding the 35 requests allowed by the Code.  
24 Therefore, Petitioners' declaration could not be well-founded, as under no circumstances could  
25 they declare that all 82 Requests were necessary.

26 The City, in an attempt to find common ground and avoid needless judicial review,  
27 admitted or denied over 85% of these excessive Requests. Petitioners already received more  
28 Responses than the 35 they are entitled to. There is nothing for the Court to compel here.

1           **B.       THESE REQUESTS SERVE NO USEFUL PURPOSE IN MANDAMUS.**

2           Although as Petitioners rightly note discovery is “allowed” in mandamus, Petitioners  
3 continue their pattern of focusing in irrelevant general statements and ignore that such discovery  
4 is rarely relevant and severely restrained. The parties litigating the substance of a BID are  
5 limited to the Administrative Record and such “extra-record evidence [that was] improperly  
6 excluded by the public agency or could not have been produced through the exercise of  
7 reasonable diligence at the time of the hearing.” (*Town of Tiburon v. Bonander* (2009) 180 Cal.  
8 App. 4th 1057, 1076). Thus, the general restrictions on discovery in Writ matters apply and for  
9 the same reasons.

10           And these restrictions are significant. As stated in *Fairfield v. Superior Court of Solano*  
11 *County* (1975) 14 Cal. 3d 768, 772:

12                   [E]vidence additional to the administrative record can be introduced  
13 only if that evidence could not with reasonable diligence have been  
14 presented at the administrative hearing, or was improperly excluded  
15 at that hearing. **This limitation on the admission of post-**  
16 **administrative evidence works a corresponding limitation on**  
17 **post-administrative discovery, restricting inquiries to those**  
18 **reasonably calculated to lead to the discovery of additional**  
19 **evidence admissible under the terms of section 1094.5.**

20           (Emphasis added; addressing a Writ of Mandamus under Code of Civil Procedure 1094.5).  
21 More specifically, “posthearing discovery may reasonably be limited to inquiries calculated to  
22 yield evidence which through no fault of the offeror does not appear in the administrative  
23 record.” (*Fairfield*, at FN 6.) Like all discovery rules, *Fairfield* does not provide an absolute  
24 bar to other discovery, but at a minimum such discovery must be limited and for an extremely  
25 good reason.

26           Petitioners make no showing that extrinsic evidence is at issue (although they refuse to  
27 concede that no such evidence can be introduced) and provide no other reason discovery should  
28 proceed and so cannot seek any discovery. Petitioners apparently searched for any cases even  
referring to discovery such as they seek and found one (*Westchester Secondary Charter School*  
*v. Los Angeles Unified School Dist.* (2015) 237 Cal.App.4th 1226). Notably, *Westchester* does  
not address under what circumstances such discovery is allowed, nor does *Westchester* in any

1 way challenge *Fairfield*. Under *Fairfield* requests for Admission would be allowed to address  
2 such extrinsic evidence and presumably *Westchester* followed *Fairfield* and limited such  
3 discovery to extra-record matters. But Petitioners fail to even argue they seek such  
4 information, let alone that the Requests have any reasonable chance of locating any.

5 Petitioners treat this as any other case, where “broad” discovery is the general rule.  
6 They are wrong. In mandamus the general rule is that discovery is limited to locating  
7 admissible extra-record evidence. Petitioners show no reason to go beyond that general rule.  
8 Petitioners’ requests are improper and no further responses should be ordered. Petitioners’  
9 Requests do not seek any discoverable information, the City’s objections are well-founded and  
10 Petitioners’ Motion should be denied.

### 11 III. SPECIFIC REQUESTS.

12 Although the City’s objections seem well-founded, the City in good faith provided  
13 responses to Petitioners’ Requests. The City was able to answer the vast majority of these  
14 requests. For a handful, the City determined that it needed either more information, or more  
15 analysis, before it could admit or deny the Requests. (The City does not concede that it has any  
16 obligation to answer these requests, as there is no indication that any admissible extrinsic  
17 evidence exists. Nevertheless, the City was willing to try to find some common ground with  
18 Petitioners.)

19 Such a disagreement over evidence fails to show any basis for compelling further  
20 responses. Many of the Requests explicitly seek extrinsic evidence which the City does not yet  
21 have or conclusions the City has not yet made, which is a commonplace and reasonable  
22 justification for such responses. Many others either implicitly seek such evidence, or are simply  
23 irrelevant if they do not. The City clearly acted in good faith here, answering more than 70  
24 requests and demurring to a handful that it believed needed further development. The City  
25 answered these Requests in good faith, and Petitioners have ample information with which to  
26 proceed to trial. Nothing further is required.

1                   **A. REQUESTS 57 TO 59.**

2           Petitioners mislead the Court here. Petitioners argue that these requests ask the City to  
3 admit that their properties were not analyzed in the Engineer's Report any differently from other  
4 commercial properties. (Motion at p. 8.) That's not a fair reading of the Requests. Request 57,  
5 for instance, asks the City to "[a]dmit that Angelus Plaza and Angelus Plaza North, **which**  
6 **provide low-income housing to seniors and do not lease space at market value**, are not  
7 analyzed in the Engineer's Report any differently from other commercial properties (*emphasis*  
8 *added*).” These requests explicitly ask the City to admit facts that are outside of the Report, with  
9 no showing that any such facts are relevant (or admissible).

10           The City pointed this out, and in response Petitioners asked the City to answer entirely  
11 different Requests, eliminating the references to low-income housing. But those new Requests  
12 duplicate other Requests. Request 57 would now read, “[a]dmit that Angelus Plaza and Angelus  
13 Plaza North are not analyzed in the Engineer's Report any differently from other commercial  
14 properties.” That is amply covered by Request 52 (“Admit that aside from Assessable Square  
15 Footage, the Engineer's Report does not consider other characteristics that are unique to an  
16 assessed parcel in calculating DCBID assessments.”) and Request 53 (“Admit that the  
17 Engineer's Report does not analyze the particular usage of a parcel (e.g., residential use versus  
18 retail use) in calculating assessment amounts.”).

19           Petitioners complain of a problem that was built into their Request. The City's response  
20 is not the problem; Petitioners apparently did not ask for the information they now seek. And the  
21 information they now claim to seek was provided in response to other Requests, which  
22 specifically addressed these issues without appearing to bring in extrinsic evidence.

23                   **B. REQUESTS 60, 61, and 63.**

24           Petitioners also mislead the Court as to these requests. Request 60, for instance, asks the  
25 City to admit “that DCBID's services are intended to provide a benefit to assessed parcels in the  
26 form of increased commercial activity and lease rates, among other varying economic benefits.”  
27 Petitioners argue that “a review of the Engineer's Report is sufficient to allow the City to admit  
28

1 or deny the matter in these requests,” but the requests themselves do not reference the Engineer’s  
2 Report at all.

3 Petitioners ask the City to respond to requests that they did not make -at least here;  
4 Petitioners made virtually identical requests earlier. The City denied the virtually identical  
5 Request 45, for example, which asked the City to admit “that the services described by the  
6 Engineer’s Report are intended to provide economic benefits to assessed parcels in the form of  
7 increased commercial activity, which includes, but is not limited to, increased lease rates, an  
8 enhanced business climate, improved business offerings, and attracting new residents,  
9 businesses, and District investment.” Except for the explicit reference to the Request this  
10 appears identical to Request 60.

11 Thus, if Request 60 has any relevance at all it must differ somehow from Request 45, and  
12 the only possible difference is that it deletes any reference to the Report. The Request thus  
13 appears to require knowing what the various stakeholders, and the DCBID itself, intended for  
14 these services. The City has not yet completed this investigation, one that appears entirely  
15 unnecessary as it does not seem likely to lead to admissible evidence (one basis of the City’s  
16 objections here).

### 17 C. REQUESTS 65 and 72.

18 Here we arrive at Requests in which Petitioners at last seek to compel answers to the  
19 Requests they actually asked, rather than Requests they could have asked but did not. However,  
20 Petitioners fail to acknowledge that what they ask cannot clearly be answered and the City is still  
21 considering the issue. None of this seems unreasonable; for the vast majority of these Requests,  
22 the City believes it can admit or deny; for others it is still considering the issue.

23 Request 65, for example, asks whether the Report “relies” on the Streets and Highways  
24 Code. The Report admittedly **refers** to the Streets and Highways Code. But the Report reflects  
25 the Engineer’s conclusions and does not “rely” on anything except the Engineer’s experience,  
26 expertise, and investigations. The Engineer’s expertise may include knowing and applying  
27 various authorities, but it is not clear at all that he relied on every authority set forth in the  
28 Report.

1 If this is relevant the City needs to finish reviewing the matter with witnesses and decide  
2 on what authorities the Engineer actually “relied.” In short, the City is still considering whether  
3 the Report “relies” on the Streets and Highways Code, including whether it must seek extrinsic  
4 evidence to answer this. Request 72 is similar, confusingly mixing direct quotes, facts, and  
5 conclusions. Had Petitioners bothered to address these requests separately during the meet and  
6 confer process, perhaps the parties could have found some way to address the core issues. But  
7 Petitioners made such efforts impossible.

8 Moreover, the City’s objections here seem particularly well-founded. Whether the  
9 Report “relied” on any particular authority or contains specific language about residential  
10 property is stunningly irrelevant. The Report is no less constitutional regardless of what  
11 authorities it cites, or if it cites nothing at all.

12 **D. REQUESTS 76, 78, and 82.**

13 Here again we are left with Petitioners seeking responses to requests they could have, but  
14 did not, make. For example, Request 76 asks the City to “[a]dmit that the Engineer’s Report  
15 concludes that there are only 13 parcels outside of the DCBID which receive a general benefit  
16 from DCBID’s services.” Petitioners now argue the City could admit or deny this based on  
17 completely different language, that “[t]here are 13 parcels that are immediately adjacent to the  
18 Downtown Center PBID and not within another PBID boundary.” That is a far less complicated  
19 matter than the Request itself.

20 The City is unsure about this more complicated proposition. It requires a conclusion  
21 tying together several other aspects of both the Report and other documents (notably the District  
22 Plan). The Report states that there may be a “spillover” effect from the DCBID’s services to  
23 nearby properties. The Report only specifically calculates a specific general benefit for thirteen  
24 parcels, but that is a different determination than whether those are the only parcels that receive a  
25 general benefit. It is possible that the engineer determined that for most such properties the  
26 general benefit was either too small to calculate or there was no reliable method to calculate it,  
27 and the general benefit was subsumed in the calculation for the other 13 properties. Indeed, the  
28

1 City would be shocked if Petitioners do not intend to argue just that, i.e., that more than 13 such  
2 properties received general benefits from the DCBID.

3 The City is still considering the matter, and may agree with the Request in the end;  
4 however, as of this time the City cannot admit or deny these Requests, and it certainly could not  
5 at the time the Responses were made. Nor is the City certain that these Requests can be  
6 answered solely from the Record should extrinsic evidence be allowed, and that investigation is  
7 not complete. Had Petitioners bothered to address these requests separately during the meet and  
8 confer process, perhaps the parties could have found some way to address the core issues. But  
9 Petitioners failure to do so made such efforts impossible.

10 In any event, if the requests can (as Petitioners argue) be answered solely from the  
11 Record, these requests add nothing to this litigation and other requests addressing the same  
12 topics. If Petitioners truly believed the Record was sufficient, they should have so stipulated and  
13 not taken the contradictory position that the Record does not justify a response. It is too late  
14 now, after failing to meet and confer on these issues, for Petitioners to seek to force the City to  
15 respond otherwise.

#### 16 IV. SANCTIONS.

17 Petitioners' course of conduct justifies sanctions. The City admitted or denied over 70  
18 pointless Requests for Admission, but denied less than a dozen for lack of sufficient information.  
19 That was not enough for Petitioners, despite most of those few contentious Requests addressing  
20 topics already well-covered by other Requests.

21 And so Petitioners persisted. But they persisted by refusing to engage in any meaningful  
22 discussion of the Requests still at issue. Petitioners made no attempt to limit duplicative requests  
23 or the scope of discovery in this mandamus action. Nor did Petitioners make any attempt to  
24 compromise, except for addressing two Requests in bad faith. This failure to engage during the  
25 Meet and Confer process led directly to this filing, and this failure should be sanctioned.

26 Most importantly, Petitioners refused to account for this being a mandamus action  
27 challenging the creation of a BID. Although discovery is allowed (if extremely limited) in such  
28 a mandamus action, Petitioners never offered to adjust the scope or breadth of their discovery or

1 the answers they would accept given the circumspect discovery possible here. Egregiously,  
2 Petitioners refused to even consider the extent to which these requests were duplicative and  
3 therefore pointless. Petitioners never even acknowledged that many of these Requests were  
4 copied from their Verified Complaint, and therefore completely unnecessary. Petitioners simply  
5 ignored that they proceed in mandamus.

6 When the City pointed out that this discovery was excessive given this context,  
7 Petitioners merely relied on broad statements regarding the “admissibility” of extrinsic evidence,  
8 that discovery is “allowed” in mandamus matters, and that discovery is “broad.” All true in  
9 general, but not all true for this specific case. Petitioners made no attempt at all to reign in their  
10 dozens of repetitive discovery requests or focus on the issues they seek to address. Instead, they  
11 mechanically insisted that they were entitled to answers “as required by the code,” without  
12 making any attempt to recognize that those “requirements” are vague and easily disputable.  
13 Petitioners ignored completely our basic obligation to find reasonable solutions to such disputes,  
14 not merely argue about them.

15 Moreover, Petitioners never expressed why they believed any purportedly missing  
16 information was relevant, useful, or not provided elsewhere in their voluminous discovery  
17 requests. If they had, perhaps the City could have convinced them otherwise or provided  
18 whatever miniscule information was missing. But Petitioners made no such efforts, thwarting  
19 any attempt to resolve this informally.

20 For example, Petitioners now express concern that the City’s response to Requests 57-  
21 59 leaves them in the dark regarding whether “assessable square footage is sufficient” with  
22 respect to calculating the special benefits provided by the BID was well addressed. (Motion  
23 at p. 8.) Likewise, Petitioners complain that because of this Response they do not know  
24 whether “the assessment method is limited to measuring Assessable Square Footage.” But  
25 Petitioners are well aware of the City’s contentions here, as the City answered Requests 51-  
26 57. If those responses do not address Petitioners’ purported concern (the Requests were  
27 denied), the City does not see how would any further response to Request 57 (asking the same  
28 information with some added assumptions).

1 For the other Requests, Petitioners never bother to offer any explanation as to what the  
2 Requests could possibly gain. And for good reason! Most merely quote parts of the Record, or  
3 restate it in virtually identical terms. Petitioners argue that Request 72 addresses whether the  
4 Management District Plan contains language pertaining to the "Treatment of Residential  
5 Housing." But why? The Plan either contains such language, or it does not. This Request adds  
6 nothing to the litigation. Moreover, simply "containing" such language seems utterly irrelevant.  
7 The issue is the treatment by the DCBID itself, which requires looking at the Record and the law  
8 as a whole, not taking quotes from one document out of context.

9 When the City asked why this Request was relevant or useful, Petitioners said nothing  
10 other than that discovery was "broad" and they can learn their opponents' contentions. They  
11 never engaged in any meaningful discussion of how this could possibly help advance the  
12 litigation or was a material "contention." This, again, seems like an area that a party acting in  
13 good faith would concede, given the proper responses to dozens of other virtually identical  
14 requests. Petitioners, however, were more interested in scoring debate points than resolving a  
15 discovery dispute.

16 Petitioners' bad faith is further shown by their internally inconsistent and illogical  
17 positions. Petitioners argue that they are entitled to discovery because they are entitled to  
18 introduce extrinsic evidence in a mandamus action. (Motion at p. 6.) But at the same time  
19 Petitioners argue that extrinsic evidence is not even at issue, as the City must only do "a review  
20 of the Engineer's Report" to answer these Requests. (*See. e.g.*, Motion at p. 8.) This at least  
21 obscures Petitioners' actual position. Do they seek extrinsic evidence, as allowed by *Fairfield*,  
22 or not? But it certainly makes their refusal to stipulate that extrinsic evidence will not be used at  
23 trial utterly confounding, given that they appear to be conceding it here in their Motion.

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25 ///

1 Moreover, Petitioners have changed their position dramatically during the meet and  
2 confer process.<sup>4</sup> Earlier, they sought repeatedly to obtain “facts” beyond the Record to support  
3 the City’s Responses. When arguing about Interrogatory responses, Petitioners demanded that  
4 the City “supplement the City’s responses to Form Interrogatory No. 17.1 to contain facts and/or  
5 documents in support of the City’s denials, as the documents set forth in Attachment 1 [i.e., the  
6 Report and other documents from the Record] to RHF’s Requests for Admissions do not  
7 suffice.” (Exhibit G, March 6 letter, p. 4.) Otherwise, Petitioners said only, “[p]lease also note  
8 that it is RHF’s position that the City’s reference to the [those documents] is insufficient as a  
9 discovery response because the documents on their own do not support the City’s contentions  
10 [i.e., denials of requested admissions].” (*See Id.*) To emphasize, during the Meet and Confer  
11 process Petitioners took the position that the City **could not respond to these Requests simply**  
12 **by referring to the Engineer’s Report.**

13 During telephone discussion the City desperately tried to discern Petitioners’ position  
14 here. The City repeatedly pointed out that it was only relying on the record where it could, and  
15 could not admit or deny where it thought extra-record evidence would be needed. Petitioners  
16 refused to acknowledge that any of its Requests could possibly invoke extra-record evidence, but  
17 at the same time refused to concede that the City could rely on the Record to justify its  
18 responses. And Petitioners made no effort to address the City’s concern that Petitioners were  
19 now arguing for “broad” discovery in mandamus, seeking discovery explicitly or implicitly  
20 addressing only the Record, and then refusing to let the City justify its responses by citing to that  
21 same Record.

22 To the contrary, Petitioners simply told the City that it must provide responses as  
23 “required by the Code.” The City repeatedly asked what that would be, if not what the City  
24 already provided, and was given the same stock phrase. Any reasonable view of the  
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26  
27 <sup>4</sup>Petitioners refused to break down their concerns regarding different Requests, which made it  
28 impossible for Petitioners to explain how some requests required going beyond the record while  
others did not. Instead, they took the blanket position that the City could not rely solely on the  
Record to respond. Now they have changed their tune.

1 correspondence here can only be left with the impression that the City desperately tried to find  
2 some way to meet Petitioner's concerns, however unfounded, but was met with nothing at all.

3 In short, if the City could have relied solely on the Record to answer Requested  
4 Admissions, then Petitioners should not have believed that any "facts and/or documents" beyond  
5 the Record were relevant. Thus, Petitioners took exactly the opposite position they now take  
6 here. Taking entirely contradictory positions both during the Meet and Confer process and here,  
7 in a subsequent Motion to Compel, reeks of bad faith and should be sanctioned.

#### 8 V. CONCLUSION.

9 The City's objections here are well-founded, and the City has no obligation to provide  
10 any responses to these requested admissions. Therefore, it cannot be compelled to submit further  
11 responses. Moreover, although the City was not obliged to respond, the City provided perfectly  
12 sound responses. The City has a sound basis for doubt here and has not finished investigating  
13 and considering these propositions. There is no reason for the City to deny some requests, but  
14 deny these closely related request for lack of sufficient information, unless the City believed that  
15 was proper.

16 But Petitioners did not participate in the meet and confer process in good faith.  
17 Petitioners never addressed these specific requests, and only now when filing their motion to  
18 compel do Petitioners even acknowledge that these requests address different topics and raise  
19 different issues. Petitioners made no effort to find common ground or otherwise avoid judicial  
20 intervention.

21 ///

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23 ///

1 The Motion should be denied. Moreover, Petitioners did not act in good faith. The City  
2 has provided its attorney's fees and costs in the Declaration of Daniel M. Whitley, attached  
3 hereto, and is entitled to their award.  
4

5 Dated: May 11, 2018

Respectfully submitted,

6 MICHAEL N. FEUER, City Attorney (SBN 111529)  
7 BEVERLY A. COOK, Assistant City Attorney (SBN 68312)  
8 DANIEL M. WHITLEY, Deputy City Attorney (SBN 175146)

9 By



10 **DANIEL M. WHITLEY**

*Attorneys for the City of Los Angeles*

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1 **PROOF OF SERVICE**

2 1, Cynthia Marchena, declare as follows: I am employed in the County of Los Angeles,  
3 California. I am over the age of 18 and not a party to the within action. My business address is  
4 200 N. Main St., Rm. 920 C.H.E., and Los Angeles, California 90012.

5 On May 11, 2018, I served the foregoing document described as: **RESPONDENT CITY**  
6 **OF LOS ANGELES'S OPPOSITION TO MOTION TO COMPEL FURTHER**  
7 **RESPONSES TO RHF'S REQUESTS FOR ADMISSION**, on the interested parties in this  
8 action by placing a [X] true copy [ ] original copy thereof enclosed in a sealed envelope  
9 addressed as follows:

10 Timothy D. Reuben, Esq.  
11 REUBEN RAUCHER & BLUM  
12 12400 Wilshire Blvd., Ste. 800  
13 Los Angeles, CA 90025

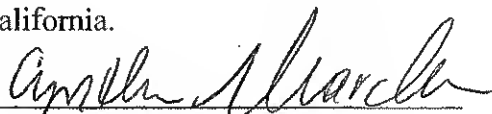
14 Michael G. Colantuono, Esq.  
15 Holly O. Whatley, Esq.  
16 Pamela K. Graham, Esq.  
17 Colantuono, Highsmith & Whatley, PC  
18 790 East Colorado Blvd., Ste. 850  
19 Pasadena, CA 91101

20 [X] MAIL - I caused such envelope to be deposited in the United States mail at Los Angeles,  
21 California, with first class postage thereon fully prepaid. I am readily familiar with the business  
22 practice for collection and processing of correspondence for mailing. Under that practice, it is  
23 deposited with the United States Postal Service on that same day, at Los Angeles, California, in  
24 the ordinary course of business. I caused such envelope to be deposited in the mail at Los  
25 Angeles, California, with first class postage thereon fully prepaid.

26 [ ] Federal - I declare that I am employed in the office of a member of the bar of this court  
27 at whose direction the service was made.

28 [x] State - I declare under penalty of perjury under the laws of the State of California that  
the foregoing is true and correct.

Executed on May 11, 2018, at Los Angeles, California.

24   
25 Cynthia Marchena